

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Antioch, California)

SUTTER DELTA MEDICAL CENTER

Employer

and

NATIONAL UNION OF HEALTHCARE WORKERS,

Case 32-RC-5624

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION,
UNITED HEALTHCARE WORKERS-WEST

Intervenor/Incumbent Union

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

The Employer, Sutter Delta Medical Center, operates an acute care hospital located in Antioch, California. The Petitioner, National Union of Healthcare Workers, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act to represent a unit of employees described in the expired collective-bargaining agreement between the Employer and the Intervenor/Incumbent Union, Service Employees International Union, United Healthcare Workers-West, which was in effect from February 12, 2006 to June 30, 2008. Subsequent to the filing of the petition, the Employer and the Intervenor executed a new collective-bargaining agreement effective December 17, 2009 to December 16, 2012. The Employer employs

about 350 employees in the unit covered by its current collective-bargaining agreement with the Intervenor.

A hearing officer of the Board held a hearing on April 27, 2010. The Petitioner, the Employer and the Intervenor appeared at the hearing and participated. The Petitioner and the Intervenor filed post-hearing briefs with me. At the hearing, all parties reached a stipulated agreement that the appropriate unit consists of the job classifications covered by the current collective-bargaining agreement between the Employer and the Intervenor, with the exception of the “Scheduler-Surgical Services Division” classification, which the Petitioner contends should be included in the unit because it was listed in the expired collective-bargaining agreement, although it has been omitted from the current agreement. In addition, the Petitioner contends that two employees should be excluded from the unit as statutory supervisors: Senior Lead Certified Phlebotomy Technician Laura Foster and Senior Respiratory Care Practitioner Denny Henriques.

The Employer and the Intervenor maintain that the appropriate bargaining unit is the unit described in their current collective-bargaining agreement. I have considered the record evidence and the arguments presented by the parties at the hearing and by the Petitioner and the Intervenor in their post-hearing briefs. As discussed below, I find that the bargaining unit described in the current collective-bargaining agreement between the Employer and the Intervenor, effective December 17, 2009 to December 16, 2012, is an appropriate unit. I further find that Foster and Henriques are not statutory supervisors within the meaning of the Act and will thus be included in the bargaining unit found appropriate herein.

THE FACTS

On February 3, 2009, the Petitioner filed a petition to represent a unit of employees described in the expired collective-bargaining agreement between the Employer and the Intervenor, including:

Aide-Diet, Aide-Diet Lead, Aide-Physical Therapy, Assistant-Medical Imaging, Assistant-Nursing, Assistant-Pathology, Assistant-Physical Therapy, Clerk-ED Communications, Clerk-File, Clerk-General Office, Clerk-Med Imaging, Clerk-Medical Records, Clerk-Medical Staff, Clerk-Registration, Clerk-Storeroom, Cook-First, Cook-Second, Coordinator-Data, Customer Service Rep, Gardener/Groundskeeper, Housekeeper, LVN, LVN-Senior, Perinatal Data Clerk, Rep-Business Office, Scheduler-Central, Scheduler-Surgical Services Division, Secretary-Credentialing, Secretary-Unit, Storeroom/Buyer, Tech-Central Processing, Tech-Central Processing Cert, Tech-Clinical Lab I, Tech-Clinical Lab II, Tech-Dark Room, Tech-Echo, Tech-EKG, Tech-Emergency Dept, Tech-GI Lab, Tech-Mammography, Tech-MRI, Tech-Nuclear Medicine, Tech-Orthopedic, Tech-Pharmacy, Tech-Radiologic, Tech-Surgical, Tech-Telemetry, Tech-Ultrasound, Therapist-Resp Care RCP, Therapist-Registered Resp, Transporter, Worker-Catering, and Worker-Dietary

Between the date the petition was filed and the date of the hearing, the Employer and the Intervenor executed a new collective-bargaining agreement. The new agreement incorporates some changes to the job classifications in the bargaining unit. Due to these changes, some of the job classifications listed in the current contract are not exactly the same as the job classifications listed in the expired contract, which was cited in the petition. Some job titles were added to the unit, while others were removed.

Despite the changes incorporated in the current collective-bargaining agreement, all parties stipulated at the hearing that the appropriate unit consists of the job classifications covered by the current agreement, with the exception of the Scheduler-Surgical Services Division job classification that remains in dispute. The Petitioner also contends that Senior Lead Certified Phlebotomy Technician Laura Foster and Senior

Respiratory Care Practitioner Denny Henriques should be excluded from the unit as statutory supervisors. Regarding the Scheduler-Surgical Services Division job classification, the Petitioner contends that it does not have enough information about the reason why this classification was removed from the bargaining unit in the current contract and thus maintains that the position should be included in the unit.

Senior Lead Certified Phlebotomy Technician

The Employer's Director of Human Resources, Christine Green, testified at the hearing that the "senior lead" position was created by agreement between the Employer and the Intervenor during their negotiations for the current collective-bargaining agreement. The Employer proposed the "senior lead" classification to recognize bargaining-unit employees who were already in "lead" positions and who were also performing additional job duties beyond the typical "lead" duties. The Petitioner agreed to add the "senior lead" classification to the contract with a 15% pay differential, which is 5% more than the 10% differential earned by "leads." Although the current collective-bargaining agreement recognizes the "lead" and "senior lead" positions, these classifications are not listed as separate job titles in the wage scale. Rather, a footnote to the wage scale states that "senior leads" will receive a 15% pay differential and "leads" will receive a 10% pay differential.

None of the parties contend that the "leads" are statutory supervisors, and all parties stipulated at the hearing to include the "leads" in the bargaining unit.¹ Although neither the "leads" nor their corresponding job classifications are specifically named in the collective-bargaining agreement, the current agreement includes a Letter of

¹ The record does not disclose the number of "leads" in the bargaining unit or which departments and job classifications have "lead" positions.

Understanding that specifically names eight employees whom the Employer and the Intervenor agreed to designate as senior leads:

Cherise Libbey, Senior Lead Registration Clerk;
Laura Foster, Senior Lead Certified Phlebotomy Technician;
Ed Torres, Senior Lead Central Processing Technician;
Tami Pastor, Senior Lead Radiology Technician;
Joe Mendoza, Senior Lead Pharmacy Technician;
Judy Watkins, Senior Lead Business Office Representative;
Joanne Bell, Senior Lead Business Office Representative; and
Mike Pineda, Senior Lead Transportation Technician.

At the hearing, the Petitioner stipulated to include all of the senior leads in the bargaining unit, with the one exception of Laura Foster, the Senior Lead Certified Phlebotomy Technician. The Petitioner asserts that Foster is a statutory supervisor.

Director of Human Resources Christine Green testified that the “lead” and “senior lead” job duties are the same as the duties stated in the standard job description for their functional area of expertise. For example, the job description for the Senior Lead Certified Phlebotomy Technician is the same as the standard job description for a Certified Phlebotomy Technician. However, in addition to the standard job descriptions, there are generic job descriptions for “lead” and “senior lead” that apply to all leads and senior leads regardless of the department in which they work. Thus, Laura Foster, the Senior Lead Certified Phlebotomy Technician, whom the Petitioner asserts to be a statutory supervisor, has the same “senior lead” job description as the other senior leads, who the Petitioner stipulated to include in the unit.

Green testified that the “senior leads” spend at least 50 percent, and as much as 80 percent, of their work time performing the standard job duties for their functional area. In addition, the senior leads may be responsible for reviewing timekeeping records for accuracy, preparing work schedules and vacation schedules, providing on-the-job training

for new employees, and communicating staff members' concerns to management. Green testified that when the senior leads review timekeeping records for accuracy, they must bring anything out of the ordinary to the department manager's attention. The senior leads prepare work schedules based on the employees' fixed days and hours of work, and the vacation schedules are prepared based on the vacation requests that have been approved, in advance, by the department manager. Moreover, the work schedules and the vacation schedules are determined in large part by the seniority provisions of the Employer's and the Intervenor's current collective-bargaining agreement. The senior leads have no authority to grant time off requests. They cannot authorize employees to change their work or vacation schedules, leave work early, or work overtime.

Green testified that the senior leads may provide on-the-job training for new employees, but they do not conduct classroom training. They also provide feedback to the department manager regarding quality control and performance issues. Although they may inform the manager about performance problems or violations of hospital rules, they do not make recommendations regarding employee discipline. Green testified that the senior leads have no authority to discipline employees or to effectively recommend that employees be disciplined. Nor do they give performance evaluations.

Green further testified that the senior leads have no authority to hire or discharge employees or to effectively recommend such action. However, they may be involved in screening job applicants. Green testified that senior leads may review job applications to verify that the applicants meet the minimum qualifications for the job. They may also be asked to participate in a peer interview committee, but such participation is not a duty specific to the "senior lead" or "lead" position. Green testified that rank-and-file

bargaining-unit employees are asked to participate in peer interview committees, and the senior lead may, or may not, be included as one of the bargaining-unit employees. The purpose of the peer interview committee is to interview a job candidate and provide feedback to the department manager about the candidate's strengths and weaknesses. The entire committee is expected to provide feedback, which is usually given orally to the manager, but is sometimes given as a written report. Green testified that the peer committee does not make a hiring recommendation. The department manager is responsible for making a hiring recommendation to the Human Resources Department, after personally reviewing job applications, interviewing candidates, checking references, and receiving the feedback of the peer interview committee. When the Human Resources Department receives a hiring recommendation, it reviews the application and information about the candidate, and the applicant must be approved by the Human Resources Department before a job offer can be made.

There is no evidence that Foster, the Senior Lead Certified Phlebotomy Technician, has any duties or authority different from the other senior leads. At the hearing, the Petitioner's attorney asserted that Foster is a statutory supervisor because she assisted the Information Technology Department in retrieving information from an employee's computer that was then used to terminate the employee for improper use of the internet at work. However, the Petitioner presented no evidence to support this assertion even though the record reflects that Foster was present in the hearing room and the Petitioner did not call her as a witness to question her regarding her alleged supervisory status.

Senior Respiratory Care Therapist

Green testified that the “Senior” Respiratory Care Therapist is a designation sometimes given to a Respiratory Care Therapist who performs additional duties. However, it is not a permanent job title, and it is not listed in the wage scale. Rather, a Letter of Understanding in the current collective-bargaining agreement provides that a Respiratory Care Therapist who is assigned “senior” duties will receive a \$2.00 per hour pay differential while so assigned. However, the “senior” Respiratory Care Therapist designation is not new. It was included in the expired collective-bargaining agreement, just as it is included in the current agreement.²

The Letter of Understanding also states that the Senior Respiratory Care Practitioner’s duties include “but are not limited to staffing and Q.I.,” however, other than the statement itself, there is no testimonial or documentary evidence regarding what the “staffing” or “Q.I.” duties involve, and there is no evidence in the record of what the “senior” Respiratory Care Therapist duties are or how they differ from the standard Respiratory Care Therapist duties. There is also no evidence regarding how often Henriques performs “Senior” Respiratory Care duties as opposed to his regular duties, nor is there evidence regarding whether any other Respiratory Care Therapists ever perform the “senior” duties.

Similar to the Petitioner’s claim regarding Foster, the Petitioner’s attorney asserted, without explanation, that Henriques was involved in discipline that resulted in an employee’s termination. Again, there is no evidence to support this bare assertion.

² Under the prior contract, the pay differential was \$0.50 per hour, while under the current contract, the pay differential is \$2.00 per hour; however, the pay increase is the only difference between the expired contract and the current contract language regarding the “Senior” Respiratory Care Therapist designation.

The Petitioner presented no evidence whatsoever that Henriques has ever exercised any of the indicia of supervisory status.

Scheduler-Surgical Services Division

The evidence shows that this classification was removed from the current collective-bargaining agreement because the Employer no longer uses the job title. Green testified that the Employer now classifies all schedulers as Central Schedulers, a classification that existed in the expired collective-bargaining agreement, as well as in the current agreement. Thus, there has been no change to the inclusion of schedulers in the bargaining unit, although they are now classified under the same job title, rather than under different titles. The Petitioner presented no evidence that the decision to classify all schedulers under the job title Central Scheduler resulted in any changes to the number of bargaining-unit employees or their job duties.

ANALYSIS

Supervisory Status of Foster and Henriques

The party asserting that an individual is a supervisor under the Act bears the burden of proving their supervisory status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 121 S.Ct. 1861 (2001); *Bennett Industries, Inc.*, 313 NLRB 1363 (1994). Section 2(11) of the Act defines a supervisor as one who possesses “authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” To meet its burden of proof, the party

asserting supervisory status must present sufficient detailed evidence to demonstrate that the alleged supervisor has the authority to exercise any one of the indicia of supervisory status specified in Section 2(11) of the Act. The possession of any one of these primary indicia of supervisory authority is sufficient to establish supervisory status, provided that the exercise of such authority requires the use of independent judgment in a manner that is more than routine or clerical. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000); *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981); *Queen Mary*, 317 NLRB 1303 (1995). However, a judgment is not independent if it is dictated or controlled by detailed instructions, whether the verbal instructions of a higher authority, company policies or rules, or the provisions of a collective-bargaining agreement. *Croft Metals, Inc.*, 348 NLRB No. 38, slip op. at 5 (2006).

In this case, the Petitioner contends that the Senior Lead Certified Phlebotomy Technician, Laura Foster, and the Senior Respiratory Care Therapist, Denny Henriques, are supervisors within the meaning of Section 2(11) of the Act and must be excluded from the bargaining unit. The Petitioner failed to present any evidence to support its contention. There is no evidence that either Foster or Henriques have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, or responsibly direct employees, or to adjust their grievances, or to effectively recommend any such action.

Senior Lead Certified Phlebotomy Technician Laura Foster

The un rebutted testimony of Human Resources Director Green is that the senior leads, including Foster, have no authority to hire, discharge or discipline employees or to effectively recommend such action, and the Petitioner presented no evidence to the

contrary. Although the senior leads may participate in peer committees to interview job candidates, Green testified that their role is to provide feedback to the department manager about the candidate's strengths and weaknesses. She testified that the peer committee does not make hiring decisions or recommendations. Moreover, participation in the peer interview committee is not limited to senior leads. Other bargaining unit members, including leads and rank-and-file employees, also participate in peer interviews and provide feedback about the candidates. Thus, the evidence fails to support the conclusion that the senior leads' participation in peer interviews constitutes the authority to hire or effectively recommend employees for hire.

Although the senior leads provide feedback to the department managers regarding employee performance, including problems or violations of hospital rules, there is no evidence that these reports are used as the basis for employee discipline or reward. Moreover, there is no evidence that the senior leads themselves deal with any performance problems or violations of hospital rules or that they even make a recommendation to the manager when they report the issue. The evidence that the senior leads merely report performance issues to the department manager is insufficient to prove that they have authority to discipline or reward employees or to effectively recommend discipline or rewards.

Green testified that the senior leads prepare work schedules and vacation schedules; however, there is no evidence that this task involves the use of independent judgment in a manner that is more than routine or clerical. *Harborside Healthcare, Inc.*, supra. On the contrary, the evidence shows that the work schedules and vacation schedules are routine. Green testified that most employees have fixed days and hours of

work, and the senior leads have no authority to alter the work schedules, approve overtime, allow employees to leave work early, or grant time off requests. Similarly, the preparation of the vacation schedule is clearly a clerical task, as it consists of recording the vacation requests that have already been approved by management. Thus, the senior leads' have the clerical task of drafting a weekly schedule consistent with employees' regular days and hours of work, taking into account any absences that have been approved by the department manager. Moreover, Green testified that the work schedules and vacation schedules must follow the seniority provisions of the Employer's collective-bargaining agreement with the Intervenor. In this regard, even the managers' discretion is limited by the provisions of the collective-bargaining agreement. All of the above evidence demonstrates that the senior leads have no authority to determine employees' work schedules or vacation schedules using their own independent judgment in a manner that is more than routine or clerical.

None of the evidence presented at the hearing established that Foster's senior lead duties and authority differed in any way to that of other senior leads. Moreover, the Petitioner presented no evidence regarding Foster's job duties in particular or examples of Foster's alleged supervisory authority. Thus, there is no evidence that Foster's duties are any different from those of the other senior leads or that she possesses authority that the other senior leads do not.

The Petitioner's only explanation for seeking to exclude Foster from the unit, while including the other senior leads, was the bare assertion that Foster assisted the Information Technology Department in retrieving information from an employee's computer that resulted in the employee's termination. The Petitioner presented no

employee testimony, no managerial testimony, no documents, and no evidence of any other kind to support its assertion. Even though Foster herself was present in the hearing room, the Petitioner did not attempt to question her regarding her alleged exercise of supervisory authority. In these circumstances, the Petitioner has failed to demonstrate that Foster is a statutory supervisor who must be excluded from the bargaining unit.

Senior Respiratory Care Therapist Denny Henriques

The only evidence regarding Denny Henriques' alleged supervisory status is that he performs "senior" Respiratory Care Therapist duties for some unspecified amount of his work time and receives a pay differential when he does so. However, there is no evidence regarding what the "senior" duties are, other than that they include the unexplained "staffing" and "Q.I." functions. Thus, there is no evidence whatsoever that the "senior" duties which Henriques sometimes performs involve the authority to exercise any of the indicia of supervisory status using independent judgment in a manner that is more than routine or clerical. In addition, the Senior Respiratory Care Therapist position was included in the expired collective-bargaining agreement between the Employer and Intervenor.

As with Foster, the Petitioner's only claim regarding Henriques' supervisory status is the unsupported and unexplained assertion that he was somehow involved in discipline that resulted in an employee's termination. In these circumstances, the Petitioner has failed to demonstrate that Henriques is a statutory supervisor who must be excluded from the bargaining unit.

Exclusion of Scheduler-Surgical Services Division

The Petitioner contends that the Scheduler-Surgical Services Division position named in the petition should be included in the unit simply because the job title was listed in the expired collective-bargaining agreement that was cited in the petition. However, although the job title was listed in the expired collective-bargaining agreement, the Petitioner presented no evidence that anyone was actually employed as a Scheduler-Surgical Services Division at the time it filed the petition. Moreover, the job title itself no longer exists because the Employer changed the job title of all schedulers to “Central Scheduler,” which is also a bargaining-unit position named in both the expired and current collective-bargaining agreements. Thus, it is clear that the removal of the Scheduler-Surgical Services Division job title from the current contract did not remove any employees from the bargaining unit or change the size or character of the unit in any other way. Accordingly, I find no merit to the Petitioner’s argument that the Scheduler-Surgical Services Division classification, which is not listed in the current collective-bargaining agreement, must nonetheless be included in the bargaining unit.

Based on the foregoing, I find that the bargaining unit described in the current collective-bargaining agreement between the Employer and the Intervenor, effective December 17, 2009 to December 16, 2012, is an appropriate unit. I further find that the Petitioner has failed to meet its burden of proving that Laura Foster and Denny Henriques possess any of the indicia of supervisory status set forth in Section 2(11) of the Act. Thus, the record does not support the Petitioner’s contention that Foster and Henriques are statutory supervisors who must be excluded from the unit. Accordingly, I find that the Senior Lead Certified Phlebotomy Technician Laura Foster and the Senior

Respiratory Care Therapist Denny Henriques will be included in the unit found appropriate herein.

CONCLUSIONS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
4. The parties stipulated, and I find, that the Intervenor is a labor organization within the meaning of the Act.
5. The Petitioner claims to represent certain employees of the Employer.
6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
7. The following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees in the following job classifications: Aide-Diet, Aide-Physical Therapy, Assistant Medical, Assistant-Medical Imaging, Assistant-Nursing, Assistant-Pathology, Assistant-Physical Therapy, Clerk-ED Communications, Clerk-File, Clerk-General Office, Clerk-Med Imaging, Clerk-Medical Records, Clerk-Medical Staff, Clerk-Registration, Clerk-Storeroom, Cook-First, Cook-

Second, Coordinator-Data, Customer Service Rep, Gardener/Groundskeeper, Housekeeper, LVN, LVN-Senior, Perinatal Data Clerk, Rep-Business Office, Scheduler-Central, Secretary-Credentialing, Secretary-Unit, Storeroom/Buyer, Tech-Cardiovascular, Tech-Central Processing, Tech-Central Processing Cert, Tech-Certified Phlebotomy, Tech-Echo, Tech-EEG, Tech-EKG, Tech-Emergency Dept, Tech-GI Lab, Tech-Mammography, Tech-Mammography (5%), Tech-MRI, Tech-Nuclear Medicine, Tech-Orthopedic, Tech-Pharmacy, Tech-Radiologic II, Tech-Sr. Certified Phlebotomy, Tech-Surgical, Tech-Telemetry, Tech-Ultrasound, Therapist-Resp Care RCP, Senior Therapist-Resp Care RCP, Therapist-Registered Resp, Transporter, Worker-Catering, and Worker-Dietary, including Leads and Senior Leads. **Excluding:** all managerial and administrative employees, all registered nurses, physicians, professional employees, confidential employees, coders, administrative secretaries, staffing coordinator, nursing administrative secretary, nursing department secretary, engineering department employees, employees presently in other bargaining units recognized by Sutter Delta Medical Center, all other employees, guards, and supervisors as defined in the National Labor Relations Act.

There are approximately 350 employees in the unit.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **National Union of Healthcare Workers**, or **Service Employees International Union, United Healthcare Workers-West**, or **neither**. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily

laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States Government may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees engaged in a strike who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within **seven** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both the preliminary checking and

the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1301 Clay Street, Suite 300N, Oakland, California 94612 on or before **May 28, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,³ by mail, by hand or courier delivery, or by facsimile transmission at **(510) 637-3315**. Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of **three** working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least **five** full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

³ To file the eligibility list electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu, and follow the detailed instructions.

Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **June 4, 2010**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁴ but may **not** be filed by facsimile.

Dated at Oakland, California this 21th day of May, 2010.

/s/ Alan B. Reichard
Alan B. Reichard
Regional Director
National Labor Relations Board, Region 32
1301 Clay Street, Suite 300N
Oakland, California 94612-5224

⁴ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.